



EU action to facilitate food donation and prevent food waste

Anne-Laure Gassin

European Commission, DG Health and Food Safety
Unit E1, Food information and composition,
food waste

Facilitate food donations

- Commission to develop **EU-wide food donation guidelines** for donors and receivers of food surplus (Circular Economy Action Plan)
- **Facilitate information sharing:** resource section on Commission "food waste" website (national guidelines, recent studies and reports); online register of EU rules on food hygiene
- Commission to implement **Pilot Project on food redistribution:** further research on practices/barriers in MS; support dissemination of future EU guidelines

EU guidelines on food donation

Overall aim: clarify relevant provisions of EU legislation and help to lift barriers to food redistribution, within the current EU regulatory framework.

Objectives:

- Facilitate **compliance of food surplus providers and recipients** with requirements laid down in EU regulatory framework (food safety, food hygiene, traceability, liability, VAT etc...)
- **Promote common interpretation** of relevant EU rules by regulatory authorities in the MS

EU food donation guidelines: complement but not duplicate national/sectorial guidance



Circulaire relative aux dispositions applicables aux banques alimentaires et associations caritatives (Belgian food safety agency)



Evira Foodstuffs donated to food aid (Finnish food safety agency)

Guide des bonnes pratiques d'hygiène de la distribution de produits alimentaires par les organismes caritatifs (<http://draaf.auvergne-rhone-alpes.agriculture.gouv.fr/Limiter-le-gaspillage-par-les-dons>)

Leitfaden für die Weitergabe von Lebensmitteln an soziale Einrichtungen – Rechtliche Aspekte (www.bmelv.de)



EU food donation guidelines: Scope

What is food surplus?

- may arise and be redistributed by food business operators (FBOs) at any stage of the food supply chain
- food fit for human consumption and compliant with all food safety requirements
- Industry may donate surplus food through redistribution organisations, charities or directly to consumers (eg employees)

EU food donation guidelines: Scope

Who are the actors?

- Donors: farmers, food manufacturers/processors, retailers, hospitality/catering sectors
- Receiving organisations:
 - **"back-line"**: recover food from actors in the food supply chain for redistribution to charity organisations
⇒ "Redistribution organisations" or ROs
 - **"front-line"**: receive food from "back-line" organisations and/or directly from actors in the food supply chain
⇒ "Charity organisations" or COs
- Guidelines address responsibilities of FBOs (not private persons)

Roles and responsibilities of actors

- Redistribution of surplus food: supply of food (whether for profit or not) is covered by General Food Law (GFL)
- ROs and COs = Food Business Operators
- FBOs have primary responsibility for ensuring compliance with food law within businesses (activity) under their control (Article 17.1), including food safety
- Only safe food shall be placed on the market (Article 14)
- In-house control plan can help manage operational risks
- Traceability requirements must be fulfilled (different for ROs and COs)

Obligations determined by organisation's activity and operating model

- Operating Model: Does the FBO redistribute surplus food to another organisation or directly to the end beneficiary?
- Type of activity:
 - Under GFL/EU food hygiene rules, ROs and COs are considered as "**retail**" – activities limited to storage and transport.
 - Under EU food labelling rules, ROs and COs which prepare food for the final consumer may be considered as "**mass caterers**".

Sorting of surplus food

- **Issue:** redistribution of products made up of multiple units, some of which may not be fit for human consumption.
- EU rules do not prohibit an FBO from sorting such foods for redistribution purposes.
- Sorting can be done either by donor (eg retailer) or receiver (eg food bank) provided that, following a detailed assessment, it can be ensured that the food which is redistributed is safe to eat. (Art 14.6 – GFL)

Traceability: requirements for redistribution

- Food donors (industry):
 - Must set up a traceability system whether foods are placed on the market for sale or for redistribution
- Receivers of surplus food:
 - ROs: (as for all operators of the food chain), must register the suppliers of products they receive (one step back) and the recipients (one step forward).
 - COs: only need to record the suppliers of the foods they receive

Responsibility vs Legal Liability

- GFL (Art 17.1): FBOs are responsible for activities under their control. FBOs must actively participate in implementing food law requirements and verify that such requirements are met.
- Liability results from the breach of a specific food law requirement and from national rules for civil or criminal liability.
- Liability is governed by national rules: determining the liability of an operator depends on the structure of the different national legal systems.
- Transfer of property of donated food, either by contract or laid down in law, is critical to clarify "who should be deemed liable for what". (Examples from MS guidelines and rules)

Food hygiene and food redistribution

- The "hygiene package": Regulations (EC) **No 852/2004 (FBO, general rules for all food)**, **853/2004 (FBO, specific rules for food of animal origin)** and 854/2004 (competent authority)
- Apply to all food business operators as defined in Regulation (EC) No 178/2002, including redistribution organisations and charities.

Food hygiene rules

852/2004

All food

All stages

*(mostly only) Registration
of establishments*

*Flexible provisions on
temperature requirements
& prevention of
contamination (good
hygiene practices)*

HACCP

853/2004

Food of animal origin

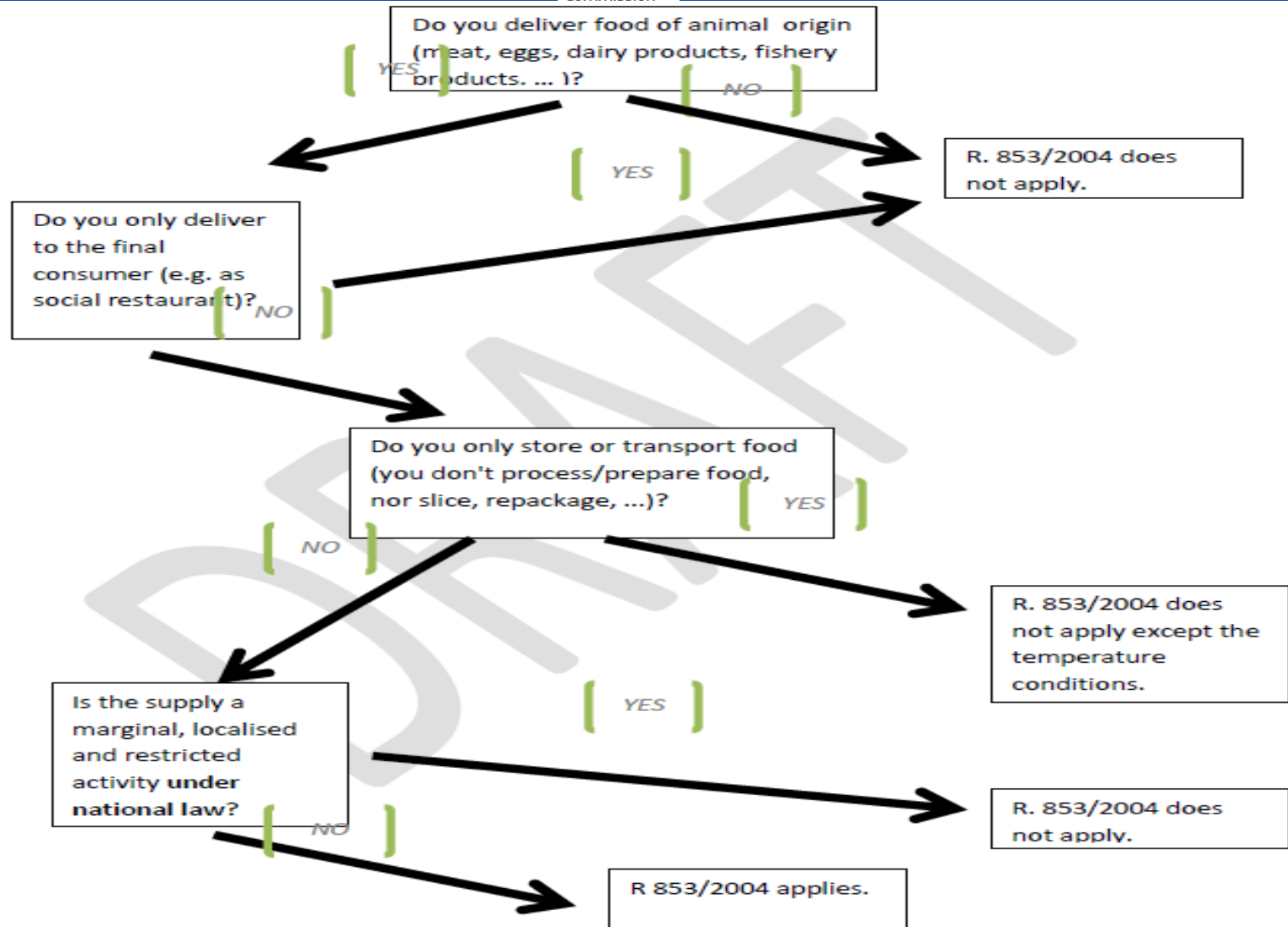
Certain stages

*Approval of
establishments*

*Specific, detailed
provisions on
temperature, conditions
& prevention of
contamination*



European
Commission



Hygiene requirements for food redistribution from hospitality/catering/food service

- Redistribution of surplus food is more limited due to food hygiene/food safety concerns. FBOs may identify and assess possible opportunities on case-by-case basis.
- Regulation No 852/2004 does not prohibit the cooling of meals at end of service in order to facilitate food donation.
- Some MS have established or are currently developing specific guidelines related to food donation from catering/hospitality sector.

Freezing

- Issue of freezing foods prior to their expiration date to extend shelf-life and facilitate redistribution has been raised by MS/stakeholders.
- Regulation (EC) No 853/2004 prescribes that products intended for freezing must be frozen without undue delay after production.
- Requirement does not apply to retailers supplying other FBOs such as food banks provided that retailers' activity stays marginal, localised and restricted (Art. 1(5)(b)(ii)).
- National measures should be notified to COM and other MS.

Food information to consumers

- Food redistribution: critical to ensure that end beneficiaries have access to same information as that required and provided when food is purchased in-store.
- Key requirements and responsibilities of FBOs laid down in Regulation (EU) No 1169/2011. Other provisions may be laid down in other EU legislation and marketing standards and/or national rules.
- FBOs which provide food to other FBOs not intended for the final consumer or to mass caterers shall ensure that the latter receive all necessary information (eg in commercial documents).

Provision of food information to consumers: Non-prepacked food

- Article 44 (Regulation (EU) No 1169/2011) requires provision of information on allergens and any other possible mandatory information prescribed by national rules.
- MS may adopt national measures concerning the means through which such information is to be provided, and where appropriate, their form of expression and presentation.

Provision of food information to consumers: prepacked food

- Mandatory food information must appear directly on the package or on a label attached therein.
- Provision of such information in commercial documents is possible in certain instances eg supply to mass caterers.
- In case of redistribution of mislabeled food (which cannot be relabelled), the FBO responsible for food information must provide the receiving organisation all necessary information so that they can fulfil their obligations in regard to end beneficiary.
- Some MS provide guidance to ensure that such food may be redistributed whilst ensuring that the end user has access to all information required, even if such information is not directly on the label.

Date marking

- Date marking helps consumers make safe and optimum use of foods.
- Two types: "best before" (relating to food quality) and "use by" dates (relating to food safety)
- Marketing of foods past the "best before" date is allowed under EU rules provided that the foods concerned are still safe and their presentation is not misleading.
- Some MS have provided additional guidance to donors on foodstuffs which can be utilised/redistributed past the "best before" date (eg BE, NL, IT).

Fiscal rules

- Value Added Tax (VAT) can have implications for the transfer of food surplus from industry to food banks and other charity organisations.
- Other fiscal instruments (eg tax deductions, corporate tax breaks) are utilised by some MS to provide economic incentives for food donation, thereby facilitating redistribution and food waste prevention.

VAT Directive

- VAT is governed by the VAT Directive (Council Directive 2006/112/EC) and must be implemented into national law.
- VAT legislation, as applied in EU MS, can have implications for food donation. In adapting rules applicable to goods handed out for free (Articles 16 and 74), MS can facilitate donation of surplus food for charitable purposes.
- EU VAT Committee agreed on guidelines to ensure the uniform application of the VAT Directive across EU MS, including application of Articles 16 and 74.

VAT rules and food donation

- The VAT guidelines agreed that for food donation ".. the taxable amount shall be the purchase price of the goods (or of similar goods or, in the absence of a purchase price, the cost price of the goods) donated, adjusted to the state of those goods at the time when the donation takes place..."
- In line with the EU VAT Committee guidelines, the Commission recommends that, in the determination of VAT for donation of foods, the value of those goods should be adjusted according to the circumstances and the state of the goods at the time of donation.

VAT rules and food donation

- Commission considers that when food donations are made close to the "best before" date or the goods are not fit for sale but can be safely consumed, these circumstances should be taken into account by MS when determining the VAT due, which could even be zero in cases where the food genuinely has no value.
- This recommendation may also apply to food donated close to the "use by" date for redistribution and consumption prior to its expiration.



Fund for European Aid to the Most Deprived (FEAD)

- FEAD contributes to alleviating poverty through provision of non-financial assistance to the most disadvantaged persons in the EU. Assistance may take the form of food support or basic material assistance or social inclusion activities.
- FEAD is implemented in the MS with help of partner organisations. Food distributed may be purchased with FEAD resources but it may also be donated.
- FEAD operational programme may foresee financing of food donations (eg costs of collection of donated food, transport, storage and redistribution to end recipients).

EU food donation guidelines: next steps

- Discussion and comments from Platform members (by 20 January 2017)
- Consultation of other COM working groups (eg FIC, HYG)
- Further development of draft with support from Platform sub-group (April meeting forecast)
- Draft guidance to Platform – June
- Final guidance to be adopted by COM – by end 2017